

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

GARY LEE DARROW,

Debtor.

Case No. 08-70060

Chapter 13

Judge Thomas J. Tucker

**ORDER DENYING DEBTOR'S "MOTION TO CLARIFY
GARY LEE DARROW'S INTEREST IN REAL PROPERTY"**

This case is before the Court on Debtor's motion entitled "Motion to Clarify Debtor Gary Lee Darrow's Interest in Real Property," filed August 26, 2009 (Docket # 34, the "Motion").

The Motion seeks an "Order clarifying that Debtor Gary Lee Darrow no longer has an interest in the real property located at 2216 Avalon, St. Clair Shores, Michigan [(the "Property"),]" due to Debtor's purported "surrender" of his one-half interest in the Property to the mortgagee, Washington Mutual, in Debtor's confirmed Chapter 13 plan, which "became effective upon entry of the [Court's March 11, 2009] Order Confirming Plan." On September 16, 2009, Debtor filed a Certification of No Response stating that no one has filed objections to the Motion. Upon review of the Motion, the Court concludes that it must deny the Motion.

It is unclear why Debtor seeks the relief requested, and the Motion does not suggest a reason, such as a desire to resolve a dispute with some other (unnamed) party. But the Court cannot grant the Motion, for at least two reasons. First, because the Motion seeks an order determining the extent of an interest in property, an adversary proceeding is required. *See* Fed.R.Bankr.P. 7001(2). Second, even if the requested relief could be obtained by motion rather than through an adversary proceeding, the Motion does not demonstrate any valid basis for the relief requested.

Debtor filed a voluntary petition for relief under Chapter 13, Schedules, and a Chapter 13 Plan (Docket ## 1, 4) on December 9, 2008. Schedule A states that Debtor and his non-filing spouse have a fee simple interest in the Property, subject to a mortgage. Schedule D states that Washington Mutual has a mortgage on the Property.

In Debtor's confirmed Chapter 13 Plan, the secured claim of Washington Mutual is treated in Class Five. (Docket # 4 at 3 ¶ I. D.5.) Under Class Five of the Plan, Debtor will "surrender" the Property. Paragraph II.C. of the Plan on page 4 states: SURRENDER OR ABANDONMENT OF COLLATERAL: Upon confirmation the automatic stay is lifted as to any collateral treated as surrendered or abandoned."

Nowhere does the plan purport to *transfer* Debtor's interest in the property to the secured creditor, Washington Mutual, or to anyone else. The only basis for the relief requested that is alleged in the Motion is the "surrender" of the Property, as provided in the plan. But the mere surrender of the Property does not, in and of itself, transfer the Debtor's interest in the Property to the secured creditor.

"Surrender" is a procedural device which permits the secured creditor to pursue its state law remedies with regard to the property surrendered. "Surrender" does not affect the substantive rights of a debtor in the property surrendered. *Cf. Green Tree Fin. Servicing Corp. v. Theobald (In re Theobald)*, 218 B.R. 133, 135-36 (B.A.P. 10th Cir. 1998)(Chapter 7)(stating that "§ 521(2)(C) [renumbered by the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" as 11 U.S.C. § 521(a)(2)(C)] does not affect nor create substantive rights;" that "[t]he language of the statute does not require a debtor to transfer title by executing and delivering a deed in order to effectuate surrender;" and that the creditor "[was] not at liberty to use the

Bankruptcy Code to enable it to more expeditiously obtain relief provided for under state law, or to obtain relief wholly unavailable under state law”); *Main Street Bank v. Hull*, No. 07-13676, 2008 WL 783722, at *1-5 (E.D. Mich. March 20, 2008)(unpublished)(Chapter 7)(affirming the bankruptcy court’s interpretation of “surrender” under 11 U.S.C. § 521(a)(2) as “merely procedural” and not affecting the substantive rights of the debtor verses the secured creditor in residential real property; and affirming bankruptcy court’s denial of the secured creditor’s motion for an order compelling the debtor to execute her intention to surrender real property, or for order placing title to the property in creditor).

Debtor’s Chapter 13 Plan is consistent with this interpretation of “surrender,” in providing that the confirmation of the Chapter 13 Plan lifts the automatic stay with regard to the Property. This permits Washington Mutual to pursue its state law remedies, which actions were stayed by the filing of the bankruptcy petition, but does not effectuate a transfer of Debtor’s interest in the Property.

Because, there is no demonstrated basis for granting Debtor the relief requested in the Motion,

IT IS ORDERED that the Motion (Docket # 34), is DENIED.

Signed on September 18, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge